

STATE OF MICHIGAN
COURT OF APPEALS

ALICE J. CUNNINGHAM,

Plaintiff-Appellee,

UNPUBLISHED
May 19, 2009

v

DEAN W. CUNNINGHAM,

Defendant-Appellant.

No. 282045
St. Clair Circuit Court
LC No. 06-001135-DO

Before: Wilder, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

In this domestic relations action, defendant appeals as of right from the parties' judgment of divorce. We affirm.

Defendant first argues that the trial court improperly listed all farm equipment as a marital asset in spite of the testimony of both parties that some of the equipment had been purchased by defendant prior to their marriage. In its written opinion, the court concluded that all the farm equipment was a marital asset and valued it at \$23,395. It assigned the farm equipment to defendant and ordered him to pay plaintiff the value of her one-half share (\$11,697.50) in the equipment. Defendant acknowledges that a spouse's separate assets can be redistributed under certain statutorily created exceptions. But, he argues, neither of the exceptions provided for in MCL 552.23 and 552.401 are applicable to the present case.

An analysis of the applicability of these exclusions is unnecessary. The trial court did not determine that the property was separate but should be invaded. The trial court determined that the farm equipment was marital property. Thus, the issue is whether the trial court's conclusion that the farm equipment was marital property was erroneous.

Where a separate asset is commingled with marital property, or otherwise contributed to the marital household, thereby causing the asset to lose "any characteristic of being separate property," the asset is no longer separate, and it is then considered marital property subject to division. *Pickering v Pickering*, 268 Mich App 1, 12-13; 706 NW2d 835 (2005). Although defendant owned certain farm equipment prior to the marriage, the equipment was used throughout most of the marriage to generate income for the parties. Because there was evidence adduced that the farm equipment brought into the marriage was both commingled with marital property and contributed to the marital household, we cannot conclude that the trial court clearly

erred in finding that all of the farm equipment was a marital asset to be divided. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002).

Defendant next argues that he was entitled to a credit applied to his spousal support obligation for payments he made for plaintiff's dental work. However, defendant never requested this credit below. An award of alimony is discretionary, the objective is to balance the income and needs of the parties without impoverishing either party, and alimony is calculated based on the circumstances of each case. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003). Factors to consider include the parties' ages, the parties' health, the ability to work, the ability to pay, and general principles of equity. *Id.* At trial, plaintiff testified that the dental work was a gift that defendant offered to pay for regardless of the pending divorce because she needed to have the work performed. Defendant did not counter plaintiff's testimony that the dental work was a gift. Rather, defendant testified that he continued to pay for the dental work. In closing argument, defendant did not request a credit for the dental work. Additionally, defendant failed to cite any case law supporting his position that his voluntary payment toward plaintiff's dental expenses should be credited against spousal support. Thus, defendant has abandoned the issue. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Defendant has also abandoned his argument that the court erred in not classifying a debt owed to Peters Brothers Farms as a marital debt. In any event, this issue is without merit. An essential counterpart to dividing marital property is the allocation of marital debt. Generally, the trial court is best positioned to determine whether a debt is a marital debt or properly allocated to one individual. See *Lesko v Lesko*, 184 Mich App 395, 401; 457 NW2d 695 (1990). Defendant argues that his indebtedness to Peters Brothers Farms should have been included as a marital debt because it was a farming debt that touches and concerns the marital property. Plaintiff testified that she did not have anything to do with the debt and should not be held responsible for it.

We cannot conclude that the trial court clearly erred by failing to include the Peter Brothers Farms invoice as marital debt. *McNamara, supra*. The invoice did not establish the precise nature of the debt, and defendant's relatives operated the business. Plaintiff testified that she was not entitled to provide opinions regarding this farming debt, and she did not sign the invoice. She further testified that the farming business was not profitable for years and caused the couple to sell acres of their land. In light of this evidence, the trial court's decision to characterize this invoice as defendant's individual debt was not clearly erroneous. *Id.*

Lastly, defendant submits that he should receive credit for monies expended to maintain the marital home while the divorce action was pending. However, review of the closing argument and the motion for reconsideration reveals that defendant did not request such a credit, and the trial court did not sua sponte impose a credit. Therefore, this issue is not preserved for appellate review. In any event, defendant fails to establish error in the property distribution. The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Berger v Berger*, 277 Mich App 700, 716-717; 747 NW2d 336 (2008). The division does not have to be numerically equal, but any significant departure from congruence must be clearly explained. *Id.* at 717. Looking to all the

circumstances of this case, we are not left with a firm conviction that the property division was rendered inequitable by the court failing to advance the credit sought. *Pickering, supra* at 7. On this record, the trial court did not clearly err in its findings and in light of those facts the distribution was fair and just.¹

Affirmed.

/s/ Kurtis T. Wilder

/s/ Patrick M. Meter

/s/ Karen M. Fort Hood

¹ Defendant's reliance on plaintiff's withdrawal of funds is also without merit. The amount of the withdrawal in light of all of the equities and circumstances of the case did not create a departure from congruence.